

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 37 OF 2015

APPLICANTS

: 1. Shivdas S/o. Manohar Kene, Aged about 44 years, Occ: Business.

Revision is abated against
applicant No.2 as per Court's
Order dtd. 28.02.2023

2. Sanjay S/o. Motiram Gawali, Aged about 31 years, Occ: Business. (Dead)

3. Arun S/o. Ramkrishna Gomase, Aged about 39 years, Occ: Labourer.

All R/o. Vitthal Nagar, Dwarka
Nagari, Tah. & District Akola.

//VERSUS//

NON-APPLICANTS : 1. State of Maharashtra, through P.S.O.
P.S. Civil Lines, Akola Tq. & Dist.
Akola.

2. Ramesh S/o. Rambhau Kenkar, Aged about 61 years, Occ: Service, R/o.
Vitthal Nagar, Umari, Tah. & Dist.
Akola.

Mr. Sandeep Chopde, Advocate for the Applicants.

Mr. A.R. Chutke, APP for Non-applicant No.1/State.

Mr. S.V. Sirpurkar, Advocate for Non-applicant No.2.

CORAM : G. A. SANAP, J.

DATED : 11th APRIL, 2023.

ORAL JUDGMENT

The applicants are the original accused Nos.1, 3 and 4 respectively. The applicant No.2-Sanjay Motiram Gawali died during the pendency of this application. Therefore, the revision has abated against him. The applicants are hereinafter referred to as the “accused”.

02] In this revision application, challenge is to the judgment and order dated 10th March, 2015 passed by the learned Sessions Judge, Akola, whereby the learned Sessions Judge allowed the appeal filed by the informant against the order of acquittal of the accused and convicted and sentenced them with the original accused No.2 for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code, 1860 (IPC). The Applicant No.1/accused No.1 is sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs.20,000/-, in default to suffer further rigorous imprisonment for one month. The deceased applicant No.2/accused No.3 was sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.20,000/-, in default to suffer further rigorous imprisonment for three months. The applicant No.3/accused No.4 is sentenced to suffer

rigorous imprisonment for three months and to pay fine of Rs.20,000/-, in default to suffer further rigorous imprisonment for one month. The original accused No.2 has not challenged the order of conviction and sentence.

03] The facts are as follows:

The incident occurred on 5th December, 2004 at Dwarka Nagari, Umri, Akola. PW-1 is the informant. PW-1, in his report, has stated that on 5th December, 2004 at 11:00 p.m., accused No.1-Shivdas called him outside the house. PW-1 went outside his house. PW-2, son of the informant, by name Vijay followed him. The informant opened the gate of the house. The accused No.1-Shivdas caught hold his neck and knocked him down on the ground. Accused No.2-Murlidhar Mankar and accused No.4-Arun Gomase assaulted the informant with bamboo stick. The accused No.2 caught hold Vijay. The accused No.4 gave a fist blow on his nose, causing bleeding injury. Accused No.3-Sanjay Gawali inflicted blows with iron pipe on PW-2 Vijay. PW-2 Vijay sustained injury to his finger. It is stated that the assault was made because PW-2 Vijay had pelted the stones at the house of the accused persons.

04] After hearing the commotion, wife and daughter of the informant came out of the house. After seeing the assault, they raised shout for help. PW-3 Deepali, daughter of the informant, made a phone call on emergency Police Helpline No.100. The police came to the spot after some time. The accused ran away from the spot. The police took the informant and his son to the police station from the spot. The informant orally narrated the incident. The report was reduced into writing by the Police Officer. The informant and his son Vijay were sent for medical examination. PW-8 Medical Officer Dr. Mehta examined them. On the basis of the report, the First Information Report (FIR) was registered. PW-7 ASI Shirsath conducted the investigation. He filed the charge-sheet against the accused for an offence punishable under Section 325 read with Section 34 of the IPC.

05] The learned Judicial Magistrate First Class, Akola, on appreciation of the evidence, found the said evidence lacking in material particulars to prove the charge and, therefore, he acquitted the accused. The informant filed an appeal against the said judgment and order. The learned Sessions Judge, Akola allowed the appeal filed by the informant and convicted and sentenced the accused as above. The original accused Nos.1, 3 and 4 have

challenged the said judgment and order by filing this revision application.

06] I have heard Mr. Sandeep Chopde, learned advocate for the accused Nos.1 and 4, Mr. S.V. Sirpurkar, learned advocate for the informant and Mr. A.R. Chutke, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

07] Learned advocate for the accused Nos.1 and 4 submitted that the evidence of PWs 1, 2 and 3 cannot be made the basis of conviction and sentence of the accused, because the witnesses are the interested witnesses. Learned advocate submitted that there are major inconsistencies in their evidence on the point of the actual occurrence and the role attributed to each and every accused. Learned advocate further submitted that there was delay in lodging the FIR and, therefore, the learned Magistrate was right in granting the benefit of doubt to the accused. Learned advocate pointed out that though the report was lodged on 6th December, 2004 in the night, the printed FIR was registered on 8th December, 2004. Learned advocate submitted that no explanation has been placed on record by the prosecution for such delay in lodging the FIR. Learned advocate further submitted that the evidence of PW-8

Medical Officer Dr. Mehta is not sufficient to prove the basic ingredients of Section 325 and also of Section 324 of the IPC. Learned advocate submitted that the learned Sessions Judge was not right in reversing the judgment of the acquittal passed by the learned Magistrate. Learned advocate submitted that the judgment of the acquittal passed by the learned Judicial Magistrate First Class, Akola, reinforced the presumption of the innocence of the accused. Learned advocate submitted that therefore the revision deserves to be allowed.

08] Learned advocate for the accused Nos.1 and 4 in the alternative submitted that the accused No.3, who was sentenced to suffer rigorous imprisonment for one year, died during the pendency of this revision. Learned advocate submitted that the accused No.2 has not challenged his conviction and sentence. Learned advocate submitted that, if this Court is inclined to maintain the judgment of conviction, then the substantive sentence of three months, awarded to the accused Nos.1 and 4 for the offence punishable under Section 324 of the IPC may be set aside. Learned advocate submitted that in place of substantive sentence, the fine amount may be increased and made payable to the informant, as a compensation.

09] Learned Additional Public Prosecutor for the State submitted that the evidence of PWs 1, 2 and 3 is cogent, concrete and reliable. Learned APP submitted that their evidence is sufficient to prove the incident of assault by the accused and the injuries sustained by the informant and PW-2 Vijay. Learned APP submitted that the oral evidence of PWs 1, 2 and 3 has been corroborated by the medical evidence. Learned APP submitted that on some untenable grounds, the accused were acquitted by the learned Magistrate. Learned APP further submitted that the learned Sessions Judge, on threadbare analysis of the evidence, found the said evidence sufficient to prove the charge against the accused under Section 324 read with Section 34 of the IPC. Learned APP submitted that the report was lodged immediately. Learned APP submitted that the mistake committed by the Police Officer in recording the printed FIR on 8th December, 2004, could not be given much weightage and used against the case of prosecution. Learned APP in short supported the judgment and order passed by the learned Sessions Judge, Akola.

10] Learned advocate appearing for the informant adopted the submissions advanced by the learned APP. Besides, the learned advocate submitted that the evidence of PWs 1, 2 and 3 cannot be

discarded only on the ground that they are relatives. Learned advocate submitted that in the absence of the injuries and the recovery of the weapon, the case of the accused could have some substance. Learned advocate submitted that the well reasoned judgment and order passed by the learned Sessions Judge does not deserve interference.

11] In order to appreciate the rival submissions, I have minutely perused the record and proceedings. I have gone through the evidence of the witnesses. PWs 1 and 2 had sustained the injuries. PW-3 is the daughter of the informant, who had immediately reported the incident by making a phone call on the emergency Police Helpline No.100. The remaining witnesses are the panch witnesses to the spot and to the recovery.

12] In order to appreciate the evidence of the eye witnesses, at the outset, it would be necessary to consider the evidence of the Medical Officer. PW-8 Medical Officer Dr. Mehta has deposed that in the night of 6th December, 2004 at 1:30 a.m., the Police Constable had brought the PWs 1 and 2 to the hospital. He has stated that he examined them. He has stated that they had sustained the injuries. He has stated that on examination of the

informant, he found following injuries.

1] Contusion 3 cm x 6 cm on the left side back in the intra scapula.

2] Abrasion $\frac{1}{2}$ cm x $\frac{1}{2}$ c on left knee.

3] Hemorrhage on the left eye temporal area 1 cm x 5 cm.

He has further stated that on examination of PW-2 Vijay, he found following injuries:

1] Contusion on right hand middle side 6 cm x 3 cm.

2] Contusion on nose 1 cm x 1 cm with bleeding present.

13] He has stated that he suspected fracture to the right hand of PW-2 and, therefore, the X-Ray of the said injury was taken. The injury certificate of Vijay is at Exh.42. He has stated that before issuing his opinion on 6th December, 2004, he had examined the X-Ray and found that there was fracture of 5th metacarpal bone. His opinion is at Exh.43. It needs to be stated at this stage, that the X-Ray plate was not produced and proved before Court and, therefore, the learned Sessions Judge discarded the evidence of the Medical Officer on the point of fracture to the

metacarpal bone. The evidence of the Medical Officer has been supported by the contemporaneous documentary evidence. The evidence of the Medical Officer apart from proving the injuries sustained by PWs 1 and 2, has supported the case of prosecution that PWs 1 and 2 were brought to the hospital by a Police Constable. This evidence would, therefore, support that immediately after the incident, the report was lodged and after reducing the said report into writing, PWs 1 and 2 were examined by the Medical Officer. The evidence of Medical Officer, therefore, supports the case of prosecution.

14] In the above backdrop, it would be necessary to appreciate the evidence of PWs 1, 2 and 3. It is true that they could be termed as interested witnesses. The question is whether their evidence can be discarded on this ground alone. In my view, the evidence of interested witnesses can be discarded, if it is found on appreciation of the said evidence that there is ring of falsehood to their testimony. It needs to be stated that the evidence of the interested witnesses, if found to be of sterling quality, it cannot be discarded on that ground alone. It needs further to be stated that, if the witnesses on the main incident are interested witnesses, then the Court must look into other corroborative evidence, to lend an

assurance to the trustworthiness of the evidence of such witnesses.

15] PWs 1 and 2 had sustained the injuries in the incident. In their evidence, they have narrated before Court the first hand account of the incident. They have deposed about the specific role played by each and every accused. The weapon of the offence namely the iron pipe was seized during the course of investigation. They have identified the said pipe. PW-3 is the daughter of the informant. She has stated that when she saw the assault on his father and brother, she immediately made a phone call to the police on emergency Police Helpline No.100. This fact has been independently proved on the basis of the evidence of PW-7 Police Officer. On receipt of this information, the police immediately went to the spot and carried the PWs 1 and 2 to the hospital.

16] Perusal of the evidence of PWs 1, 2 and 3 would show that on material aspects, their evidence is cogent, consistent and reliable. In their cross-examination, nothing substantial has been elicited to discard and disbelieve their evidence. On minute perusal of the evidence of PWs 1 and 2, I am satisfied that their evidence cannot be discarded and disbelieved. Their evidence, on careful perusal, is found to be worth credible. The very core and crux of

their evidence vis-a-vis the actual incident and the role played by each of the accused, has not at all been shaken. The learned Sessions Judge found the said evidence reliable and worth credible. The learned Sessions Judge has recorded the reasons, to record a finding against the accused on the basis of the said evidence. On going through the record and proceedings, I am of the view that the evidence of these witnesses cannot be discarded. Similarly, the finding of fact arrived at on the basis of the evidence of the witnesses cannot be interfered with.

17] It is submitted that the FIR was recorded on 8th December, 2004. In my view, even if it is accepted that the printed FIR was prepared on 8th December, 2004, the same could not be the ground to give the benefit of doubt to the accused. The delay in lodging the FIR would have been beneficial to the accused and the ground for giving them benefit, provided there was no immediate information to the police about the incident and the recording of the said information into writing. Exh.17 is the report reduced into writing by the Police Officer on the basis of the information given by PW-1. The report lodged immediately after the incident has been supported by the contemporaneous documentary evidence as well as by the evidence of the Medical

Officer, who had examined the PWs 1 and 2 within 2-3 hours from the occurrence of the incident. In view of this, the informant could not be blamed for this lapse on the part of the police. At the most, it could be said to be the lapse and serious mistake on the part of the Police Officer. This mistake committed by the Police Officer even if accepted as it is, would not make the case of the prosecution doubtful. Therefore, in my view, the learned Sessions Judge was right in reversing the judgment of acquittal and convicting the accused.

18] The next important question is with regard to the substantive sentence. Learned advocate submitted that the incident in question had occurred in December, 2004. They were acquitted of the charge by the learned Magistrate on 1st July, 2010. The judgment of acquittal was reversed in appeal on 10th March, 2015. Learned advocate submitted that the accused are more than 60 years old. Learned advocate submitted that no purpose would be served by sending them to jail in respect of the incident of 2004. Learned advocate submitted that the ordeal of the criminal trial faced by them for near about 20 years is the biggest punishment. Learned advocate submitted that this Court has a discretion to set aside the order of substantive sentence and suitably substitute the

same by awarding the compensation. Learned APP submitted that in the totality of the facts and circumstances, the Court may appropriately exercise the discretion.

19] I have bestowed thoughtful consideration to the submissions and all the aspects brought on record. In my view, at this stage, it would not be appropriate to send the accused to jail. They were sentenced to suffer three months' rigorous imprisonment and fine of Rs.20,000/- each. In my view, instead of substantive sentence, the accused persons for commission of this offence can be directed to pay compensation of Rs.20,000/- each. The compensation can be made payable to the PW-1 informant. In my view, if this course of action is adopted, then it would serve the ends of justice. I, therefore, conclude that on this point, there is substance in the submissions advanced by the learned advocate for the accused Nos.1 and 4.

20] Accordingly, the revision application is **partly allowed**. The substantive sentence of three months' rigorous imprisonment is set aside. It is substituted by an order of compensation of Rs.20,000/- (Rupees Twenty Thousand) each by the accused Nos.1 and 4.

21] Accused No.1-Shivdas Manohar Kene and accused No.4 Arun Ramkrishna Gomase shall pay compensation of Rs.20,000/- (Rupees Twenty Thousand) each to the informant. The compensation be deposited in the Trial Court, within a period of two months. If they fail to deposit the compensation, then they shall undergo simple imprisonment for one month each.

22] It is made clear that this compensation of Rs.20,000/- each is in addition to the fine of Rs.20,000/- each, awarded by the learned Sessions Judge, Akola.

23] Rule is made absolute in above terms. The revision application is disposed of.

(G. A. SANAP, J.)

Vijay